



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

RELOCATION ASSISTANCE GUIDELINE

SUBJECT: Interpreting "Fair Market Value for Continued Use"
DATE: Effective Date: November 25, 2003
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Regulation at issue

760 CMR 27.05(1), entitled "Eligible Expenses," states that moving and related expenses shall be determined in accordance with the federal regulations appearing at 49 CFR 24.303, 24.304, 24.305 and 24.306 (as amended). At issue here is an interpretation of 49 CFR 24.303(a)(10) which pertains to loss of property incurred as a result of moving or discontinuing a business. More specifically, the regulation states that the payment shall consist of the lesser of:

- (i) The fair market value for continued use of the item at the displacement site, less the proceeds from the sale, or
- (ii) The cost to move the item.

Procedure

In June 2002, a relocation consultant asked the Bureau of Relocation to determine the meaning of "fair market value for continued use," and whether in determining such value, the cost of installation of the item should be depreciated. In a letter dated June 20, 2002, DHCD stated that the installation of property was not to be depreciated when determining the fair market value for continued use of property.

Subsequently, DHCD was asked to solicit comments on the interpretation of the regulations and issue a guideline in accordance with 760 CMR 27.07. On January 8, 2003, DHCD asked interested parties to give public comment on the interpretation of 760 CMR 27.05(1). DHCD solicited comments from approximately 75 parties, consisting of displacing agencies and relocation consultants. Parties were given until February 7, 2003 to respond. DHCD received 9 responses to the request for public comment from the following:

- 6 responses from relocation consultants
- 1 response from a displacing agency

- 1 response from an organization representing housing and redevelopment authorities (which are often displacing agencies).
- 1 response from a person representing the American Society of Appraisers¹

Generally, 2 parties felt installation **should** be depreciated when determining fair market value for continued use, 6 parties felt installation **should not** be depreciated, and one response did not address the issue of whether installation (as opposed to equipment) should be depreciated. The comments can be summarized as follows:

- Those who said installation **should not** be depreciated voiced concern for the displaced business and stated it would be fundamentally unfair to the business to allow taking agencies to depreciate the cost of installation of equipment, and it would cause the business disproportionate injury.
- Those who said installation **should** be depreciated noted that the cost to public agencies would be too great if installation could not be depreciated.

DHCD has considered all the comments received, and notes that the practice of relocation is unique. There are many factors in the relocation process that require special consideration and do not fall neatly into simple appraisal formulas or definitions. Above all, the purpose of the Uniform Relocation Act is to ensure fairness.

Guideline

When interpreting the meaning of the phrase “fair market value for continued use of the item at the displacement site,” as it appears in 49 CFR 24.303(a)(10), DHCD will adopt the following definition:

“The estimated amount, that may reasonably be expected for an item in an exchange between a willing buyer and a willing seller, with equity to both, neither under any compulsion to buy or sell, and both fully aware of relevant facts, including the present-day cost of installation, as of a specific date and assuming that the business earnings support the value reported. This amount includes all normal direct and indirect costs, such as installation and other assemblage costs to make the property fully operational.”

In determining an appraised value based upon this definition, the Bureau of Relocation believes that in some cases the appraiser or valuation consultant may determine it to be appropriate to apply some rate of depreciation to the item based upon the appraiser’s or valuation consultant’s assessment of the physical deterioration, functional obsolescence or economic obsolescence of the item that is being appraised. So, for example, it may be appropriate to depreciate the value of older machinery or equipment.

However, the Bureau of Relocation further finds that application of any rate of depreciation toward the installation expenses or other related assemblage costs to make the property fully operational would not be fair or appropriate. 49 CFR 24.303(a)(10) requires an appraiser to determine the fair market value of an item for continued use at the displacement site. The only way to determine the value for continued use of

¹ On April 4, 2003, some 2 months after the deadline to submit comments, DHCD received comments from a 10th party. The party weighed in favor of depreciating the cost of installation.

any item is to consider the present day value of installation. So, even if the item is older, and was installed many years ago, the cost of installation should not be depreciated.

To determine otherwise, would present a situation that would not be equitable to displaced businesses and it would present a significant disincentive to displaced businesses to claim an actual direct loss of tangible personal property benefit.

Therefore, displacing agencies are directed to instruct any appraisers or valuation consultants not to apply a rate of depreciation toward expenses associated with the installation or related assemblage expenses when determining the fair market value for continued use of items of personal property in cases of a relocation claim based upon the actual direct loss of tangible personal property benefit.